

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

NICHOLE HAWKINS,	)	
	)	
Plaintiff,	)	
v.	)	Civil Action No. 09-98 Erie
	)	
MARILYN BROOKS, et al.,	)	
	)	
Defendants.	)	

**MEMORANDUM ORDER**

Plaintiff's civil rights complaint was received by the Clerk of Court on May 1, 2009 and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's Report and Recommendation, entered on February 19, 2010 [89], recommends that the Defendants' motions to dismiss [40] and supplemental motion to dismiss [86] be granted in part and denied in part. Plaintiff was allowed ten (10) days in which to file objections. On February 24, 2010, Plaintiff filed a document styled as a "motion not to dismiss in part/ vac[ate]" [92], which this Court construes to be in the nature of objections to the Report and Recommendation. On March 3, 2010, Plaintiff filed documents styled as "Response to Defendants['] Objection Plaintiff[']s Motion to Strike/ And Or Deny as Interrogatories are Pending Response of Judge[']s Order 3/8/2010" [98] and "concerns to this honorable judge regarding [M]arch 31, 2010 closing of discovery" [97].

After de novo review of the Complaint and the documents in the case, together with the Report and Recommendation and Plaintiff's responses and/or objections thereto, the following order is entered:

AND NOW, this 9<sup>th</sup> day of March, 2010;

IT IS ORDERED that the Defendants' motion to dismiss [40] and supplemental motion to dismiss [86] be, and hereby are, GRANTED in part and DENIED in part as follows:

1. Plaintiff's Eighth Amendment claims against Defendants Cerami and Dewitt, based upon verbal threats and harassment, shall be, and hereby are, DISMISSED;
2. Plaintiff's retaliation claims against Defendant Dewitt shall be, and hereby are, DISMISSED;
3. Plaintiff's due process claims against Defendants Brooks and Beard for refusing to transfer her to an out-of-state facility shall be, and hereby are, DISMISSED;
4. Plaintiff's claim against Defendant Senz based on reports which Senz allegedly made to the DOC Office of Professional Responsibility shall be, and hereby is, DISMISSED and Defendant Senz shall be terminated from this case;
5. Plaintiff's mental anguish and defamation claims shall be, and hereby are, DISMISSED to the extent Plaintiff seeks monetary damages based upon Defendants' Eleventh Amendment and/or sovereign immunity;
6. Plaintiff's retaliation claims against Defendants Cerami and Rogers shall be allowed to proceed;
7. Defendants' motion to dismiss Plaintiff's claims against Defendants Winstead, Brooks, and Beard, based upon their alleged lack of personal involvement, shall be, and hereby is, DENIED; and
8. Plaintiff's mental anguish and defamation claims against Defendants Winstead, Brooks, Beard, Cerami, Rogers, and Dewitt shall be allowed to proceed only to the extent Plaintiff seeks injunctive relief.

The Report and Recommendation of Magistrate Judge Baxter entered on February 19, 2010 [89] is adopted as the opinion of this Court.

s/ Sean J. McLaughlin

SEAN J. McLAUGHLIN  
United States District Judge

cm: all parties of record.  
U.S. Magistrate Judge Susan Paradise Baxter